

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Sandra Weisman

**Date application filed with the Town Clerk:** April 8, 2009

**Nature of request:** Request Special Permit to create a two-family dwelling on a non-conforming property, under Section 9.22 of the Zoning Bylaw, at 197 College Street.

**Address:** 197 College Street (Map 14B, Parcel 171, R-G Zone)

**Legal notice:** Published on April 8 and April 15, 2009 in the Daily Hampshire Gazette and sent to abutters on April 6, 2009

**Board members:** Tom Simpson, Eric Beal, Tom Ehrgood

**Submissions:**

- One (1) copy of the Memorandum, ZBA FY2009-00033, prepared by staff, dated April 17, 2009;
- One (1) copy of the application, filed with the Town Clerk on April 10, 2009;
- One (1) copy of a completed Management Plan;
- One (1) copy of a Site Plan prepared by Harold Eaton and Associates, Inc. dated February 6, 2009 and last revised on April 9, 2009;
- One (1) copy of elevations and floor plans prepared by Ingram Associates, dated February 2009;
- One (1) copy of Article 7, Duplexes in R-G and R-VC, report to Town Meeting, November 2008, submitted by staff;
- One (1) copy of a Town GIS map showing property and Zoning District, submitted by staff;
- One (1) copy of a draft Easement Deed providing the right to allow the occupants of 197 College Street to utilize the walkway and to park vehicles on the adjacent property of 195 College Street;
- One (1) copy of a draft residential lease.

**Site Visit:** April 17, 2009

Tom Simpson and Tom Ehrgood met with Sandra Weisman and Clifford Lasky on the site. Eric Beal viewed the site separately. The Board observed the following:

- Two residences at 197 and 195 College Street adjacent to each other located on the south side of College Street, a heavily traveled road;
- The property of 197 College Street containing a driveway traveling slightly down hill and into the rear of the property and to an existing detached garage;

- The east property line of 197 College Street is adjacent to the Fort River Autobody property;
- The existing attached garage at 197 College Street partially renovated into living space;
- The contiguous lawn area at the rear of 197 and 195 College Street which was mostly open and bordered to the south by woods;
- The approximate area of the proposed walkway running east and west across the rear yard of both properties;
- The approximate area of the proposed shared parking area at the rear of 195 College Street;
- The approximate area of the proposed driveway along College Street;
- The existing paved parking area at the front of 195 College Street.

**Public Hearing:** April 23, 2009

Peter MacConnell presented the application. For the public hearing, Mr. MacConnell provided the draft easement and lease. Mr. MacConnell stated the following:

- He is representing Sandra Weisman and her son Clifford Lasky, who helps manage the property;
- Ms. Weisman purchased 195 College Street in 2006 and 197 College Street in 2008;
- The owner started renovations at 197 College Street and identified fairly significant structural defects with the roof, framing and rafters of the garage;
- At this time, Ms. Weisman decided to convert the dwelling into a two-family house given the recent change to the Zoning Bylaw allowing duplexes by right through Site Plan Review;
- An application was submitted to the Planning Department under Site Plan Review. During that process it was determined that the lot was non-conforming because of inadequate lot frontage. Town Counsel indicated that because the frontage is less than required, the application requires a Special Permit under Section 9.22;
- The property is in the General Residence (R-G) District where two-family dwellings would otherwise be allowed by right under Site Plan Review;
- The project meets all other requirements of the Zoning Bylaw, except for the frontage, which is about 79 feet where 100 feet is required.

Mr. MacConnell referenced the site plan and elevations and stated the following:

- The proposal is to convert the single family residence on 197 College Street to a two-family residence;
- The elevations show a second floor addition over the existing garage. This addition option was chosen because the roof and rafters need to be replaced anyway;
- The new dwelling unit will have three (3) bedrooms - as well as the three (3) bedrooms in the existing dwelling for a total of six (6) bedrooms;
- The footprint remains the same, but the height of the garage portion will increase;
- The neighborhood is a mixed neighborhood. It abuts the Fort Hill auto body Building, is close to the Western Mass Electric substation building across the street, and there are a number of single and two-family dwellings and Leader Lumber is up the street;
- The proposal fits with the goals of the Draft Master Plan. The Draft Master Plan identifies the importance of directing growth into existing built-up areas and to provide housing.

- The house is located on a busy street in an existing mixed neighborhood, is properly serviced with water and sewer, meets the Design Review Standards, and is of a proper scope and scale with the architecture in the neighborhood;
- Due to the fact that the size and configuration of the property is tight, the proposal includes shared parking with the adjacent property of 195 College Street.
- Currently 195 College Street is owned by Ms. Weisman and is rented. The tenants currently park in a small parking area located at the front of the house;
- The proposal includes the removal of the front paved area and the creation of a new parking area behind the house on 195 College Street.
- The parking area will be constructed of TRG and will be accessed by a new driveway as shown on the site plan;
- The parking area will provide eight (8) parking spaces, and the existing parking on 197 College Street provides four (4) parking spaces. The Zoning Bylaw requires two (2) parking spaces per unit;
- The proposal provides more than one (1) space per bedroom;
- The four (4) spaces on 197 College Street are somewhat inconveniently located, which is why the proposal is to add more spaces on 195 College Street and share the parking spaces;
- An easement has been prepared to run between the two (2) properties to make certain that the right to pass and re-pass to and from the parking spaces runs with the land;
- The proposal includes the planting of approximately 400 sq. ft. of arbor vitae shrubs to the north east of the parking area and a row of arbor vitae shrubs in between the parking area and adjacent property to provide screening;
- The proposal includes low landscape lighting along the walkway with motion detecting lights at the entrance of each house;
- There will be solar powered lamp post lighting fixtures about 10 feet in height at the parking area;
- The Management Plan submitted shows there is currently a contract with a landscape service company for both properties and a cleaning company to clean each house occasionally;
- The trash will be stored under the proposed deck at the rear of 197 College Street;
- There are ample storage facilities including the basement and garage at 197 College Street;
- The lease contains a provision to control noise by establishing a \$100 fine for complaints of neighbors or police and allows tenants to be evicted based upon noise complaints.

Mr. Simpson stated he got the impression during the site visit that the house would be owner occupied. Ms. Weisman stated that she currently lives there, but Mr. MacConnell explained that the applicant also owns another property in Amherst where she will live.

Mr. Simpson stated that the Board typically tries to require that two-family residences be owner occupied. Mr. MacConnell responded that with the exception of the non-conforming lot frontage, the application would be allowed by right through the Site Plan Review with the Planning Board.

Mr. Simpson inquired about the easement for the parking area on 195 College Street. Mr. MacConnell stated that it will be a legally-binding easement, recorded at the Registry of Deeds.

He added that there could be legal challenges to the easement. However, it was written such that the right and obligation will run with the land and will be binding upon the current owner and any future owners. He stated that a future owner challenging the easement could potentially win in a court case, but didn't think that it would be likely.

Mr. MacConnell stated he feels that the shared parking arrangement is not required because the property of 197 College Street can provide four (4) parking spaces. He added that the shared parking offers more than adequate parking and prevents the vehicles from backing onto College Street.

Mr. Ehrgood asked if the existing driveway at the front of 195 College Street would be removed and converted to grass. Mr. MacConnell confirmed that it would.

Mr. MacConnell stated that an alternative to the shared parking would have been to remove the existing garage on 197 College Street to create parking in the rear of that property, but the applicant had determined that would not be the best use of the land and would eliminate storage for use by the tenants. He added that the two dwellings are in close proximity to one another and the proposed walkway is short.

Mr. Simpson stated that he understands the concept of the proposed shared parking area on 195 College Street. However, he is not particularly satisfied with the parking areas discussed for 197 College Street or how accessible the spaces will be for use by the tenants. Mr. Simpson stated that ideally there would be turnaround area provided at the end of the driveway and that he is concerned with the ability of the easement to be maintained if either of the properties are sold.

Mr. MacConnell stated that the area at the end of the driveway is tight because of the location of the garage and a specimen tree that the applicant would like to keep. Regarding the easement, Mr. MacConnell stated that the Board could include it in the conditions of an approval.

Mr. Beal stated that there is always a chance that a property owner could lose rights to their land through legal disputes with a neighbor. He added that if an easement for the shared parking was legally removed at a later date, the property would no longer be in compliance with the conditions of the Special Permit and the owners would have to come back to the ZBA.

Mr. Simpson asked how many bedrooms are in the dwelling at 195 College Street. Mr. MacConnell stated that there are four (4) bedrooms, and ten (10) bedrooms total between the two (2) properties.

Mr. MacConnell stated that he understands that the Board prefers to see one (1) parking space per bedroom even though the Bylaw only requires two (2) spaces per unit. He noted that if only two (2) vehicles parked at 197 College Street there would still be enough parking between the two properties to provide one (1) space per bedroom and that still provide additional paved areas if there were additional vehicles.

Mr. Beal asked for confirmation that there are eight (8) parking spaces available on 195 College Street and two (2) parking spaces on 197 College Street. Mr. MacConnell stated that he believes there are twelve spaces in total with four (4) spaces available at 197 College Street but added that there are at least two (2) spaces that are easily and conveniently available and eight spaces proposed on 195 College Street.

Mr. MacConnell stated that the proposal meets the requirements of Section 10.38. He said the proposal:

- Is suitably located in the neighborhood;
- Is compatible with existing uses on the street;
- Will not produce any pollution;
- Will not be a hazard to vehicles, abutters or pedestrians and will actually enhance the conditions;
- Has adequate facilities including town water and sewer;
- Reasonably protects adjacent properties by including hedges to screen parking;
- Provides safe vehicular and pedestrian movement by providing additional parking and walkway;
- Does not change the on-site drainage because there is no significant change to the building footprint and the driveway will be permeable;
- Meets the Design Review requirements of Section 3.2040 and Section 3.2041 of the Zoning Bylaw;
- Meets all requirements of the Zoning Bylaw with exception of the lot frontage.

Mr. Simpson stated that with this type of proposal, the Board typically requires the registration of the rental units with the Board of Health and asked if the applicant would also register 195 College Street.

Mr. MacConnell stated that because 195 College Street is a rental unit, that they would register both properties.

Mr. Simpson stated that he does not have any objections to the applications, however, due to the time of the evening, would like to continue the deliberation to another date.

Mr. MacConnell stated that if they are able to get a sense from the Board that the application was acceptable and the Board would require another date to prepare the conditions, they would be satisfied.

Ms. Weeks recommended that the applicant prepare a revised site plan be provided to the Board that shows the parking spaces on 197 College Street be delineated. The Board determined that four (4) parking spaces should be shown for the property.

Ms. Weeks identified that the proposal includes the creation of a second floor, at the back of the house, and that technically the deck is included in lot coverage calculations. Therefore, the footprint of the house is not expanding, but the lot coverage will be increased by area of the proposed deck.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing and Mr. Beal seconded. The Board VOTED unanimously to close the public hearing.

Mr. Simpson MOVED to continue the public meeting to April 30, 2009 at 7:00 P.M. and Mr. Beal seconded. The Board VOTED unanimously to continue the public meeting to April 30, 2009 at 7:00 P.M.

**Public Meeting:** April 30, 2009

For the public meeting, Mr. MacConnell provided to the Board a revised site plan, prepared by Harold Eaton and Associates, Inc. The revised site plan bears the same revision date as the original site plan, April 9, 2009. However, the revised site plan delineates four (4) parking spaces on the property of 197 College Street and bears a stamp "Received April 30, 2009 Amherst Planning Department".

Mr. Simpson stated that during the public hearing, the Board had indicated that the application was probably acceptable, and that they will now set the conditions of the permit.

The Board spent the remainder of the public meeting to review and craft conditions for a Special Permit if the application were to be approved.

The Board identified that they were not provided with floor plans for the existing dwelling unit. Mr. MacConnell noted that the floor plans for the existing unit were prepared but were not ready in time for the continued public meeting.

The Board determined that the rooms in both units shall be used in accordance with the floor plans and there shall be a maximum of three (3) bedrooms per unit allowed in the dwelling. The floor plans for the existing unit will be required to be submitted to the Zoning Board of Appeals for review and approval at a public meeting. Upon review and approval of the floor plans, all rooms shall be used as labeled.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other multi-family dwellings and commercial uses in the immediate neighborhood. The proposal improves the on-site parking by creating a shared parking area on the adjacent parcel. The shared parking arrangement is compatible with the existing neighborhood because it is located behind an existing residence and is less visible than the existing parking arrangement. The addition to the second floor will be compatible with other two story structures in the neighborhood and does not require the expansion of the building footprint.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The permit requires the screening of the shared parking area from the adjacent residential property to the west with evergreen shrubs. The permit requires all exterior lighting, including lighting fixtures associated with the parking area, to be downcast to minimize glare and light spillover onto the abutting

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. The proposal eliminates a small parking area immediately in front of 195 College Street and provides a shared driveway and parking area behind the dwelling. The shared parking area consisting of eight (8) spaces and the four (4) spaces provided on the subject property enhance the ability of tenants to safely park vehicles. The proposal includes the installation of a lighted walkway from the shared parking area to the subject property for safe pedestrian movement.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The proposal, including the shared parking area, provides parking for a total of 12 vehicles, on two properties, where six (6) parking spaces are required by the Zoning Bylaw.

The proposal provides greater than one (1) space per bedroom as there are a total of 10 bedrooms on both properties. The area of the subject property meets the requirement for additional lot area in connection with the creation of a two-family use.

10.386 – The proposal is in conformance with the Parking regulations of the town. The proposal includes parking for a total of 12 vehicles, on two properties, where as six (6) parking spaces are required by the Zoning Bylaw. The proposal provides more than one (1) space per bedroom as there are a total of 10 bedrooms on both properties. The proposal provides landscaping, including an area of 392 sq. ft. planted with 3 foot tall Arbor Vitae and a 3 foot wide area of Arbor Vitae, to screen the parking area from the adjacent residential use to the west in accordance with Section 7.112 of the Zoning Bylaw. The shared parking arrangement provides parking greater than 120% of the parking otherwise required, in accordance with Section 7.20 of the Zoning Bylaw. The approved site plan shows the location of the proposed vegetation and the permit requires the installation and permanent maintenance of the same.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. All trash and recycling associated with the creation of the two family dwelling will be stored behind the dwelling under the proposed deck and will not be visible from adjacent properties. The trash and recycling is picked up by a local hauler and shall be in accordance with the approved Management Plan.

10.392 – The proposal provides adequate landscaping, including an area of 392 sq. ft. planted with 3 foot tall Arbor Vitae and a 3 foot wide area of Arbor Vitae, to screening the parking area from the adjacent residential use to the west in accordance with Section 7.112 of the Zoning Bylaw. The approved site plan shows the location of the proposed plantings and the permit requires their installation and permanent maintenance.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. The proposal includes solar powered pole lighting to be installed adjacent to the west property line. The permit requires the lighting fixtures to be downcast to minimize glare and light spill over onto the abutting property.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. The proposal includes an addition creating second floor space over the existing garage area (to be renovated). The size and style of the addition is compatible with the scale and architecture of other existing structures in the vicinity. The use as a two-family dwelling is in harmony with the existing uses in the vicinity which includes single and multifamily uses as well as a range of commercial uses.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The proposal provides additional rental housing whose scale and design are compatible with the existing neighborhood. The permit requires parking in excess of the requirements of the Zoning Bylaw to mitigate the potential negative impacts associated with non-owner occupied two family residences. The creation of a two family dwelling in the R-G Zoning District is in harmony with the intent of the Zoning Bylaw where the use is allowed by right.

3.2041 - Design Review Standards – The Zoning Board of Appeals finds that the proposal meets the design principles and standards set forth in Sections 3.2040 and 3.2041 including height, proportion, landscaping and architectural compatibility with the other residences in the neighborhood.

### **Public Meeting – Zoning Board Decision**

Mr. Simpson made a motion to APPROVE the permit, with conditions. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit for the creation of a non-owner occupied two-family dwelling with shared parking, second floor addition and new deck on a non-conforming property under Section 9.22 of the Zoning Bylaw, as requested in the application submitted by Sandra Weisman, at 197 College Street (Map 14B, Parcel 171, R-G Zoning District), with conditions.

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THOMAS SIMPSON

\_\_\_\_\_  
ERIC BEAL

\_\_\_\_\_  
TOM EHRCOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2009.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
in the Hampshire County Registry of Deeds.



**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants Special Permit, ZBA FY2009-00033, for the creation of a non-owner occupied two-family dwelling with shared parking, second floor addition and new deck on a non-conforming property under Section 9.22 of the Zoning Bylaw, as requested in the application submitted by Sandra Weisman, at 197 College Street (Map 14B, Parcel 171, R-G Zoning District), with the following conditions:

1. The new dwelling unit shall contain three (3) bedrooms and all rooms shall be used as labeled on the floor plans [sheet 3 of 3] prepared by Ingram Associates, dated February, 2009 and approved by the Zoning Board of Appeals dated April 30, 2009.
2. Floor plans for the existing dwelling unit, with each room labeled, shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting. If approved, the rooms shall be used as labeled.
3. There shall be no more than three (3) individuals in each dwelling unit in the two-family dwelling.
4. All vehicle parking, on both properties, shall be in the spaces designated and shown on the site plan prepared by Harold Eaton Associates, Inc., last revised on April 9, 2009 and stamped approved by the Zoning Board of Appeals dated April 30, 2009.
5. Prior to the Certificate of Occupancy, the vegetative screening along the west property line of 195 College Street shall be installed in accordance with the specifications shown on the site plan prepared by Harold Eaton Associates, last revised on April 9, 2009 and stamped approved by the Zoning Board of Appeals, dated April 30, 2009, and shall thereafter be permanently maintained.
6. Prior to the Certificate of Occupancy, an easement for the parking area on 195 College Street, shall be filed with the Registry of Deeds and proof of the same submitted to the Planning Department.
7. Prior to the Certificate of Occupancy, each property (195 College Street and 197 College Street) shall be registered as rental units with the Board of Health and proof of the same submitted to the Planning Department.
8. The property shall be managed according to the Management Plan approved by the Zoning Board of Appeals, dated April 30, 2009.
9. There shall be storage areas accessible for use by the tenants of each unit.
10. There shall be no indoor furniture or other accessories, such as BBQ grills, on the front lawn.
11. All exterior lighting fixtures, including the solar powered pole lights, shall be downcast to minimize glare and spillover onto adjacent properties.
12. The name, address and telephone number of the property management company and property owner shall be provided to the Building Inspections Department, Fire Department and Health Department and shall be kept current.
13. There shall be a reflective street number installed adjacent to West Street which shall be visible in both directions.
14. This permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of May, 2009.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE